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MARTY J. JACKLEY
ATTORNEY GENERAL

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DEC 21 2018

S.D. SEC. OF STATE

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

HAND DELIVERED

December 21, 2018

Hon. Shantel Krebs
Secretary of State
500 E. Capitol
Pierre, SD 57501

RE: **Attorney General's Statement for initiated measure (marijuana)**

Dear Secretary Krebs,

This Office received a proposed initiated measure that the sponsor will seek to place on the November 2020 general election ballot. Enclosed is a copy of the proposed measure, in final form, that was submitted to this Office. In accordance with SDCL 12-13-25.1, I hereby file the enclosed Attorney General's Statement with respect to this measure.

By copy of this letter, I am providing a copy of the Attorney General's Statement to the sponsor pursuant to SDCL 12-13-25.1.

Very truly yours,

Handwritten signature of Marty J. Jackley in black ink.

Marty J. Jackley
ATTORNEY GENERAL

MJJ/PA/lde
Enc.

cc/enc.: John Dale

Filed this 21st day of

December 2018

Handwritten signature of Shantel Krebs in black ink.

SECRETARY OF STATE

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INITIATED MEASURE

ATTORNEY GENERAL'S STATEMENT

Title: An initiated measure to legalize marijuana and paraphernalia for certain people, and to make other changes to State law regarding marijuana.

Explanation:

This measure may allow anyone over age 21 to possess, grow, sell, and distribute marijuana or marijuana paraphernalia.

It prohibits State enforcement of any law, including federal law, regarding marijuana or paraphernalia, except as provided in the measure. It forbids prosecutions for driving under the influence of ingested marijuana. It prohibits law enforcement and agents of the State from keeping records regarding use or possession of marijuana or paraphernalia.

Individuals under 21 working in the agricultural industry may handle marijuana. Individuals under 21 may possess and ingest marijuana with a doctor's recommendation. No one may distribute marijuana to a person under 21 unless that person has a doctor's recommendation. Violations may result in community service or a fine.

"Localities" cannot tax marijuana or paraphernalia use, nor regulate the consumption of marijuana, the location of marijuana-related businesses, or the cultivation, production, distribution, or sale of marijuana or paraphernalia.

The State cannot infringe a person's right to keep and bear arms for possessing marijuana or paraphernalia. A parent's marijuana or paraphernalia use or possession cannot be used against the parent in a child custody case.

Judicial or legislative clarification of this measure will likely be necessary. Marijuana remains illegal under federal law.

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Be it enacted by the people of South Dakota:

Section 1. That the code be amended by adding a NEW SECTION to read:

As used in this Act, cannabis means any part of the plant genus Cannabis spp containing one or more of the cannabinoids tetrahydrocannabinol (THC), cannabidiol (CBD), and cannabigerol (CBG), whether growing or not, whether living or not, whether in vegetative or flowering stages, cannabis seeds, and all other compounds naturally occurring in the plant genus Cannabis spp.

Section 2. That the code be amended by adding a NEW SECTION to read:

As used in this Act, cannabis implements means cannabis accessories, cannabis growing supplies and growing tools, means of processing cannabis, means of transporting cannabis, means of reselling cannabis, and the tools and means of consuming cannabis.

Section 3. That the code be amended by adding a NEW SECTION to read:

No law enforcement agency in the state nor any agent of the state may enforce any federal law regarding cannabis or cannabis implements.

Section 4. That the code be amended by adding a NEW SECTION to read:

A person's right to keep and bear arms may not be infringed for possessing cannabis or cannabis implements in accordance with the provisions of this Act.

Section 5. That the code be amended by adding a NEW SECTION to read:

No charge may be brought under chapter 32-23 for consumed cannabis metabolites. No law enforcement agency in the state nor any agent of the state may keep any record, whether written, electronic, digital, or otherwise, based on a finding that cannabis plant matter or its metabolites or cannabis implements are found on a person's body or breath or in the person's possession.

Section 6. That the code be amended by adding a NEW SECTION to read:

Any person under age twenty-one who is working in the agriculture industry with a letter from the person's employer describing the legal duties performed by the person may handle cannabis having greater than three percent tetrahydrocannabinol and cannabis implements.

Section 7. That the code be amended by adding a NEW SECTION to read:

Any person under age twenty-one who possesses a doctor's recommendation describing the person's medical condition that requires cannabis as medication may possess and ingest cannabis having greater than three percent tetrahydrocannabinol.

Section 8. That the code be amended by adding a NEW SECTION to read:

Any person under age twenty-one who possesses cannabis plant material containing greater than three percent tetrahydrocannabinol without an employer letter under section 6 of this Act or a doctor's recommendation under section 7 of this Act is subject to a penalty of ten hours of community service for each offense, not to exceed one hundred hours in any calendar year, and shall surrender the plant material to a law enforcement agency in the state.

Section 9. That the code be amended by adding a NEW SECTION to read:

The cannabis plant material surrendered under section 8 of this Act shall be tested by agents of the state in accordance with standards deemed appropriate by the department of agriculture. The secretary of agriculture shall promulgate rules pursuant to chapter 1-26 to establish and implement the standards under this section. The standards shall be in accordance with the general requirements for the competence of testing as published by the International Organization of Standardization under ISO/IEC 17025:2005. The plant material tested under this section shall be catalogued without retaining or associating any personally identifying information about the person from whom the cannabis or cannabis implements were obtained. Any cannabis plant material that is confiscated under this section shall be destroyed after testing. At least once per year the department of agriculture shall issue a report disclosing test results and overall weight and composition of confiscated cannabis.

Section 10. That the code be amended by adding a NEW SECTION to read:

Any person who sells or distributes cannabis to any other person under age twenty-one who does not have a doctor's recommendation under section 7 of this Act shall be subject to one hundred hours of community service for each offense, not to exceed two hundred hours in any calendar year, after which the person shall pay a one thousand dollar fine per offense.

Section 11. That the code be amended by adding a NEW SECTION to read:

If a person cannot display the documentation required under section 6 of this Act or section 7 of this Act to an official at the time of cannabis possession, the person may display the documentation to a court of competent jurisdiction within thirty days of the offense to avoid prosecution under section 8 of this Act.

Section 12. That the code be amended by adding a NEW SECTION to read:

The secretary of agriculture shall promulgate rules pursuant to chapter 1-26 regarding the manufacture, sale, and transport of cannabis in the state consistent with the provisions of this Act.

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Section 13. That the code be amended by adding a NEW SECTION to read:

Any revenue generated from licensure fees under this Act in excess of the amount required to implement the provisions of this Act shall be awarded by grant to South Dakota small farmers. The grants shall be awarded to support early-stage, high-risk local agriculture new venture, and research and development. The grants may only be awarded to proof of concept projects that are already completed, using a ratio of investment-level-to-value of the expressed entrepreneurial idea as a key criterion for the award. The secretary of agriculture shall promulgate by rule pursuant to chapter 1-26 the criteria for any grant under this section.

Section 14. That the code be amended by adding a NEW SECTION to read:

No court may determine parental suitability based on the parent's use or possession of cannabis or cannabis implements when deciding a child custody case under chapter 25-4a.

Section 15. That the code be amended by adding a NEW SECTION to read:

No locality may pass any ordinance that restricts or provides for the location of operation of a cannabis-related business. No locality may tax or pass any ordinance governing the use or consumption of cannabis or cannabis implements. No locality may enact any zoning requirement that is discriminatory to a cannabis related business. A locality may require a standard business license to conduct cannabis or cannabis implements sales within the locality. No locality may ban home cultivation or any other cultivation of cannabis or the lawful production, distribution, and sale of cannabis or cannabis implements.

Section 16. That the code be amended by adding a NEW SECTION to read:

Nothing in this Act grants the right of an employee to use cannabis while at a workplace, nor limits the right of employers to enact workplace policies that restrict or prohibit the use of cannabis in the workplace. Nothing in this Act prohibits a landowner from restricting or prohibiting the use of cannabis on the landowner's private property.

Section 17. That the code be amended by adding a NEW SECTION to read:

No law enforcement agency in the state nor any agent of the state may enforce any law regarding cannabis or cannabis implements other than as provided in this Act.

Section 18. That the code be amended by adding a NEW SECTION to read:

Any person over age twenty-one may possess, grow, sell, and distribute cannabis and cannabis implements in accordance with the provisions of this Act.